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No. 96-1840

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1996

ROBERT LYNN COCHRAN,

*Petitioner,*

v.

PLANNED PARENTHOOD ASSOCIATION OF SAN MATEO COUNTY, PLANNED PARENTHOOD ALAMEDA/SAN FRANCISCO, and NADER OSTOVAR,

*Respondents.*

On Petition for Writ of Certiorari
to the Court of Appeals of California

## REPLY BRIEF FOR PETITIONER

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## INTRODUCTION

Throughout their Brief in Opposition, Respondents not only reach but, as shown below, frequently transgress the outer limits of veracity in attempting to prove that petitioner Mr. Cochran engaged in unlawful, tortious conduct at the San Mateo abortion clinic, and that this conduct justified an injunction abrogating his right to engage in peaceful expression in a public forum.

Ironically, the lower court decision which Respondents urge this Court not to review made no such claim. On the contrary, the court specifically refused to review the evidence concerning Mr. Cochran's conduct. Petition at 15a. Rather, that decision held that Mr. Cochran should be enjoined, first and foremost, because he was "associated" with Operation Rescue. Secondarily, the court held that Mr. Cochran should be enjoined because of trial court findings that 1) any congregation of pedestrians on the sidewalk in front of the clinic creates a traffic hazard, 2) there were activities which were "potentially distracting" to drivers, and 3) some patients were upset by the activities.

None of the lower court's justifications for the injunction implies any unlawful conduct by Mr. Cochran. For this reason, Mr. Cochran's Petition for Writ of Certiorari concerns not simply a review of the specific factual record, but the issue of whether a court may enjoin an individual from engaging in constitutionally protected speech, when the record is devoid of any evidence that the individual did more than lawfully engage in such activity for five years.

Put more bluntly, the issue raised is, when an abortion clinic sues a protester, must the abortion clinic, as a matter of law, always win in spite of the facts?

## STATEMENT OF FACTS

Respondents purport to set the record straight about Mr. Cochran's activities at the clinic. The assertions which they claim to support by repeated citations to the same few pages of the record are so egregiously dishonest that the portions of the record cited by Respondents are set out in the Appendix to this Reply Brief.[1] Only by reading the cited testimony can the extent of Respondents' blatant mischaracterization of the record be grasped.

As a forerunner to the other distortions of the record, Respondents state, *"During the regular Operation Rescue protests at the San Mateo clinic*, protesters, including petitioner, blocked the narrow sidewalk directly outside the clinic. RT1 8, 57, 61, 111; RT2 170, 184." Brief in Opposition at 3 (emphasis added, original emphasis omitted). Not only was there no evidence that the weekly protests were sponsored by Operation Rescue, Mr. Cochran's testimony was to the contrary, i.e., that he came to the clinic on his own, not in conjunction with Operation Rescue. RT1 107-08, 117. Respondents' contention that these were "Operation Rescue protests" rests solely on their second contention, that Mr. Cochran was a "member" of Operation Rescue, and that therefore his weekly activity constituted "Operation Rescue protests." *See* Brief of Respondents in Court of Appeal at 20.

Aside from false claims about Mr.Cochran blockading the clinic[2] and blocking the sidewalk, Respondents also claim that Mr. Coch-

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[1] The appendix includes every portion of the testimony cited by Respondents which refers to Mr. Cochran, plus other portions omitted by Respondents which clarify or amplify that testimony. Many of the pages cited by Respondents, particularly those concerning the blockades, contain no reference whatsoever to Mr. Cochran.

[2] Respondents falsely state no fewer than nine times in their Opposition that Mr. Cochran organized, participated in, and/or admitted participating in trespass and blockades at the clinic. Opposition at 1, 2, 10, 13, 15, 22, 23, 25. A reading of the cited transcript portions, particularly Mr. Cochran's "admission," RT1 151, 155, shows this assertion to go well beyond zealous advocacy to border on a deliberate attempt to perpetrate a fraud on this Court. See also, RT1 64-65; 75-76; 115-6; 142.

ran "repeatedly violated other injunctive provisions throughout the post-injunction period." Opposition at 4. For example, they first assert that Mr. Cochran violated a provision of the injunction that was later struck down by the appellate court, i.e., a prohibition on approaching patients who had asked to be left alone.

Respondents next complain that Mr. Cochran "was attempting to block cars on a public street in front of the clinic as they were approaching." Opposition at 4. Aside from the distortion of the testimony, Respondents' complaint is particularly ironic since they are responsible for putting Mr. Cochran across the street where the only way he can speak or give literature to women approaching the clinic is by flagging down cars and approaching them in the street. Respondents repeatedly cite this conduct, resulting from the unjust issuance of the preliminary injunction, as a violation of the injunction which paradoxically justifies making that same injunction permanent.[3]

Respondents also bring the damning charge that Mr. Cochran "admitted getting 'in front of [pedestrians'] line of view' to give them literature. RT2 [sic] 157-58."[4] Opposition at 5. Respondents find this "admission" of such significance that they repeat it three more times in their brief. Opposition at 12, 13, 15. Apparently getting in someone's line of view is the sort of egregiously "intimidating, threatening, [and] harassing conduct" [Opposition at 19] from which Respondents seek to protect their patients — not, of course, from Mr. Cochran's message.

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[3] This same testimony also appears in another circular argument by Respondents, namely, as evidence "that the number of protesters on the sidewalk impacted both pedestrian and vehicular traffic." Opposition at 12; see also Opposition at 15. Respondents seem to forget that this evidence refers to Mr. Cochran's conduct while across the street from the clinic, *in compliance with the preliminary injunction*. Again, they use the situation created by the unjust issuance of the preliminary injunction to justify making the injunction permanent.

[4] Mr. Cochran testified, "I don't attempt to walk in front to get in their way but it's just more polite to be in front of their line of view versus behind or just over where they would have to divert their attention." RT1 157-58.

Reading the actual testimony at trial, rather than Respondents' fictitious rendition or the trial court's equally fictitious findings of fact (drafted by Respondents), one can understand the appellate court's resorting to its own fictions (see Petition at 18-19) to evade reviewing Mr. Cochran's argument that there was insufficient evidence to support the judgment. Any such review could lead to only one conclusion: the injunction depriving Mr. Cochran of his free speech rights was unjustly issued and should be dissolved. The present climate in the California courts makes such a result unthinkable.

## I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISION IN *MADSEN v. WOMEN'S HEALTH CENTER*

Respondents fail to address Mr. Cochran's argument that there was no evidence that the *weekly picketing* adversely affected pedestrian or vehicular traffic. Instead, they cite testimony relating to the few clinic blockades. Opposition at 9-10. Indeed, if this was the evidence the lower court had in mind when it referred to "evidence of actual obstruction of the sidewalk," Petition at 10a, it is understandable that it did not make that clear. The absurdity, and perhaps hypocrisy, of prohibiting First Amendment activity as a response to these instances of deliberate trespass and blockading could not fail to escape the court. Moreover, four instances of interference with access, spread over five years, would hardly justify a speech-free zone as "burden[ing] no more speech than necessary" to accomplish significant governmental interests." *Madsen v. Women's Health Center*, 512 U.S. 753, 770 (1994). See Petition at 10-11.

## II. *SCHENCK V. PRO-CHOICE NETWORK OF NEW YORK* DID NOT SANCTION THE WHOLESALE ABROGATION OF DUE PROCESS AND FREE SPEECH RIGHTS IN THE NAME OF PUBLIC SAFETY

Respondents rely on *Schenck v. Pro-Choice Network of New York*, 117 S.Ct. 855 (1997), to defend the trial court's use of an alleged hazard to through vehicular traffic created by "any congregation of pedestrians" on the sidewalk to justify the speech-free zone.[5] Opposition at 14-15. Respondents fail to note two distinctions.

First, in *Schenck*, the trial court's invocation of the interest in public safety resulted from an evidentiary record showing a "dangerous situation created by the interaction between cars and protesters," and "fights that threatened to (and sometimes did) develop." 117 S.Ct. at 866. Obviously, the trial court was relying on evidence presented at a hearing, subject to cross-examination and argument of counsel.

In the instant case, the trial court kept the "hazard to through traffic" card up its sleeve through the preliminary injunction hearing and the trial on the permanent injunction, only pulling it out after the trial record was closed and briefing completed. Petitioner had no notice of or hearing on this issue at all. One can only wonder why the court let the parties go through the motions of a trial. Surely, it would have been more efficient to let the parties know what the determinative factor would be, and let the trial go forward on that issue alone.

Second, implicit in the public safety interest invoked by the district court in *Schenck* is the fact that the defendants in that case were responsible for the threat to public safety. In the instant case, Mr. Cochran is faultless, but he nonetheless loses his First Amendment rights. The only fault apparently lies with the city of San Mateo for constructing "narrow" (six-foot wide) sidewalks

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[5] Respondents go beyond distorting the record to distorting their own Opposition where they state, "After the preliminary injunction issued, *numerous* protests by Operation Rescue created just such congregations of pedestrians. See discussion at Sec II." Opposition at 6 n. 1 (emphasis added). Section II refers to *one* rescue staged by Operation Rescue on July 17, 1993, about which there was no evidence of danger to vehicular traffic. The rest of the section refers to Mr. Cochran's activities while across the street from the clinic.

and curved streets, and allowing "narrow" (six-foot) building setbacks. This fault is undoubtedly repeated in thousands of cities and towns across the country, just waiting for plaintiffs seeking to stifle free speech to discover.[6]

## III. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISIONS CONCERNING DUE PROCESS AND FREEDOM OF ASSOCIATION

As Respondent correctly notes, Mr. Cochran "admitted" his involvement with Operation Rescue. Opposition at 22. Specifically, Mr. Cochran admitted that he had at one time been involved with Operation Rescue "for a few weeks," that he had made donations, received mailings, and had attended some rallies and rescues.[7] This, Respondents assert, is sufficient to hold him bound by the injunction issued against Operation Rescue.

Aside from the clear conflict between Respondents' argument and this Court's precedents, Petition at 23-24, one need only draw out this argument a little farther to see its absurdity. Under Respondents' theory, thousands, if not tens of thousands, of people who have given money to Operation Rescue, attended activities, and received mailings, are bound by this injunction, even if they have never been anywhere near the San Mateo clinic. All of these people apparently forfeited their *individual* First Amendment rights prospectively by being "involved" with Operation Rescue. Moreover, this forfeiture extends indefinitely into the future; they can never reclaim their rights by disassociating themselves from their

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[6] Nowhere in their Opposition do Respondents address the issue of the alleged "evidence of . . . activities which were potentially distracting to passing drivers," also relied on by the appellate court for upholding the injunction. Pet. 10a. After themselves creating this evidentiary "fact" and legal theory, Respondents apparently are unwilling to defend it.

[7] As is amply clear from the record, note 2, *supra*, Mr. Cochran did not "admit" participating in rallies or rescues at the San Mateo clinic. Not only did he specifically deny such participation, RT1 115-6, 142, 155, but Respondents' witnesses' own testimony corroborates this. RT1 64-65, 75-76.

past "involvement." A clearer violation of the rights of freedom of association and due process is difficult to imagine.

Respondents further state, "the Court of Appeal justifiably upheld the injunction issued against petitioner as a named defendant." Opposition at 22. In fact, the lower court did *not* do that. After specifically refusing to review the evidence concerning Mr. Cochran's own activities at the clinic, the court held simply that his past contacts with Operation Rescue were "enough to justify treating Cochran as either a member of Operation Rescue or sufficiently associated with it that he is bound by the injunction against that entity." Petition at 15a. Thus, the lower court clearly did *not* address the question of Mr. Cochran's liability as a named defendant in his own right. His liability is simply derived from that of Operation Rescue.

Respondents' assertion that Mr. Cochran's discussion of cases relating to the effect of an injunction on nonparties is irrelevant is equally mistaken. The lower court itself cited just such authorities. Petition at 15a. Mr. Cochran simply explained why the lower court's reliance on the theory of "acting in concert" was in error. Petition at 23.

## IV. AN INJUNCTION WHICH PURPORTS TO BIND "ALL PERSONS WITH ACTUAL NOTICE" IS INVALID ON ITS FACE

Respondents claim that Mr. Cochran "fails to identify any nonparties whose constitutional rights would be compromised by the injunction, much less a substantial number of them. The record is devoid of any specific instances of unconstitutional application of the injunction." Opposition at 25.

By demanding an evidentiary record of specific instances of unconstitutional application of the injunction to nonparties, Respondents transform the test for facial overbreadth into that of an as-applied challenge. *On its face*, the injunction compromises the constitutional rights of every individual who is not a party or acting in concert with parties. The "substantial number of instances" of

possible unconstitutional application can be found in the number of individuals who would not be bound by a properly drafted injunction, but are nonetheless bound by this one.

As far as a "realistic danger" of the injunction being applied by the Respondents to compromise the rights of third parties, that is amply documented in the record. Planned Parenthood employee Gabriela Gibson, who served the injunction on picketers, testified that it was her understanding that "[o]nce a person was served and had notice of it, . . . they were to be subject to the injunction," whether or not they had any connection with the litigation and regardless of whether they were members of Operation Rescue. RT1 68. Planned Parenthood Executive Director Anne Colby also testified that "clinic defense" personnel were told that no protestors were allowed within fifteen feet of the clinic. RT2 155-56.[8]

Thus, there is nothing hypothetical or speculative about Mr. Cochran's claim that this injunction, which on its face prohibits all persons with notice from engaging in lawful speech activity in a public forum, is a facially overbroad restriction on constitutionally protected speech.

## CONCLUSION

Mr. Cochran agrees with Respondents on one point: this case does not require this Court's plenary review. The numerous errors on the face of the lower court decision, errors which sanction the imposition of speech-restrictive injunctions in the absence of any

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[8] Further, Respondents claim that Mr. Cochran and others "violated a temporary restraining order granted by a federal court in March of 1992." Opposition at 10. The underlying premise of this accusation is that the restraining order binds all persons with notice, as there is nothing in the record to indicate that Mr. Cochran or any of the other protestors who allegedly violated the order by being on the sidewalk were named parties or acting in concert with named parties. See RT1 117. Ms. Gibson testified simply that she observed "protestors breaking the terms of the temporary restraining order by being within fifteen feet of our property line." RT1 44.

showing of fault by a defendant, are sufficient to warrant summary reversal based on a review of the briefs now before the Court.

Respectfully submitted,

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July 11, 1997

# APPENDICES

## APPENDIX

Excerpts of testimony of
Gabriela Gibson, Robert Cochran, and Anne Colby.

September 28, 1994.

Testimony of Gabriela Gibson

RT1 7-8

Q [by Ms. Parker]: What do they do? Let's talk about 1991. What was the general pattern 1991?

A: They held signs, large signs, with anti abortion slogans or pictures of fetuses. They returned patients as they were approaching if by foot.

They would rush up to them. If in a car, they were—would also rush up to the driver. They would yell to the patients attempting to stop patients from entering the clinic, yell things regarding abortion, equating abortion with murder.

Q: Did you recognize any of the protestors in 1990-1991 time frame regular protestors?

A: Well, only—I would have to refresh my memory with pictures other than Rob Cochran. He's always been there.

RT1 44:12-45:12

Q [by Ms. Parker]: And were you present at the clinic on March 27, 1992?

A: Yes. I took some of these photos.

Q: And what did you observe that day?

A: Protestors breaking the terms of the temporary restraining order by being within fifteen feet of our property line.

Q: And do the photographs that have been marked as Exhibit 23, accurately and truthfully represent what you observed on March 21st?

A: Yes.

Q: And could you describe them for us? It's a little difficult to see from these photographs.

A: The first page shows the front of the clinic just on the sidewalk, just south of the north driveway, on the sidewalk.

And it shows one of our clinic defense escorts in the white T-shirt and the other three are protestors.

Q: And they were in the fifteen foot speech—free zone that the injunctions had?

A: Yes.

Q: Did you ever see defendant, Rob Cochran, come within the fifteen foot zone imposed federal temporary restraining order?

A: Yes. He is in this photo. He is the one on the far left (indicating).

RT1 57-58

Q [by Ms. Parker]: You indicated that you've seen Rob Cochran at various protests?

A: Yes.

Q: And how many occasions do you recall you've seen Mr. Cochran in front of the San Mateo clinic?

A: I couldn't count. Almost every week for four years.

Q: And have you observed him on the dates of the blockades?

A: Yes, he was there on both of those days.

Q: The February 1992 and July 1993?

A: Yes.

RT1 59-61

Q [by Ms Parker]: Have you ever seen Mr. Rob Cochran violate the speech free zone which the injunction imposed in front of the clinic?

A: Yes.

Q: On how many occasions have you seen him do that?

A: I would have to look at my records to see exactly but I would estimate four or five.

Q: And when you had seen him do that, could you show us using Exhibit 24 where you've seen him (indicating)?

A: Well, the fifteen foot limit comes to about here, all the way across, and I've seen him here and here (indicating).

Q: That's on the corner of the building in front of the driveway?

A: Yes. On the sidewalk or at the sidewalk (indicating).

Q: And what have you seen Mr. Cochran doing?

A: I've seen him approach patients as they're walking. As they're walking he will run up to half a block down the street to meet someone that he—that appears to be walking towards the clinic and he will stand very close to them and follow them until they reach the clinic.

Upon leaving, he will also follow patients for that distance and longer. In fact, even all the way up to 25th street—which is one block—as when he follows them, he yells and pleads with them concerning abortion. Not to have an abortion.

He thrusts—for cars that are pulling up and appear to be slowing at the clinic, he waives his arms and attempts to flag down the car and motion for them to park on his side of the street as a parking attendant and he thrusts pamphlets into their car window.

He calls he shouts down this all which way to anyone coming in to the clinic (indicating) he follows very closely to patients.

He also wants—a patient has said, leave me alone on numerous occasions. Has refused to stop approaching that patient although in our TRO, it days say that a person must stop approaching anyone who wishes to be left alone. So there's numerous occasions of that occurring.

RT1 63

Q [by Ms. Parker]: And what is the first document?

A: It's a photo taken at the San Mateo clinic on July 17, 1993 at our blockade of Rob Cochran talking with Ken Reed.

Q: Who is Ken Reed?

A: He's a leader, Operation Rescue.

Q: And how do you know Mr. Reed is leader of the Operation Rescue?

A: He testified in the Daly City federal court case that we had.

Q: You observed him testify as to being a leading of Operation Rescue at that time?

A: Yes.

RT1 64-65

Q [by Mr. Kennelly]: Mrs. Gibson, the first photograph, Mr. Cochran talking to Mr. Reed, is that outside the fifteen foot zone?

A: Yes.

Q: And the picture of Mr. Cochran talking to Mr. Foti, is out —that outside the fifteen foot zone?

A: Yes.

RT1 74-75

Q [by Mr. Kennelly]: Good afternoon, Mrs. Gibson. Now you indicated that on in the blockades of July of 1992, excuse me, on February, in February of 1992, Mr. Cochran was present as one of the protestors, is that, is that correct?

A: Yes.

Q: Did he enter Planned Parenthood premises on that date?

A: No.

Q: Did he in any way block ingress or egress to Planned Parenthood premises on that day?

A: Yes.

Q: How?

A: By being a part of the crowd that was near the front door on the sidewalk.

Q: Was he within fifteen feet of the entrance for example?

A: By the entrance, you mean, the door?

Q: Yes.

A: I would estimate it at approximately that. I don't know.

Q: At approximately fifteen feet away?

A: Yeah.

RT1 75-76

Q [by Mr. Kennelly]: Now you indicated on July 17, of 1993, that Mr. Cochran was present at the Planned Parenthood clinic, is that correct?

A: Yes.

Q: Okay. Did he participate in the—did you see him blocking ingress or egress to Planned Parenthood premises on that date?

A: No.

Q: Where was he?

A: When I saw him where he was, he was across the street from the Planned Parenthood clinic. Directly across the street.

RT1 78-80

Q [by Mr. Kennelly]: Okay. And in as part of that [Turn the Hearts in July of 1994], did you ever see him [Mr. Cochran] blocking ingress or egress to the clinic?

A: I saw him block up—obstruct cars that were approaching the clinic.

Q: On the public street?

A: Yes.

Q: How was he doing that?

A: As I said earlier, he rushes up to cars approaching the clinic, waiving his arms and coming very close and cars frequently do slow down and stop.

And my judgment it appears that they're stopping because he's so close as to be in danger. He has been endangered by that car moving.

Q: Did he let the car move thereafter? Did the car proceed on?

A: Well, different things have happened. On a number—on some occasions different things happen. I mean, sometimes they

just slow down and continue going and sometimes they actually stop and most times they are confused as to who he is and why he's trying to flag down the cars.

I know that because I also—I am outside viewing it and I also speak to the driver if I can and ask if they are going to Planned Parenthood, they can park in back and that's where our parking is.

Q: Okay. Now you testified earlier that he rushes—runs towards people as much as a half a block away, is that correct?

A: Yes.

Q: Okay. Now isn't it a fact that you have escorts out there who also try and get to a—prospective patients as soon as they see that individual?

A: No.

Q: Haven't you ever—you indicated that Mr. Cochran who—to use your term, repeatedly refuses to stop after people ask him, is that correct?

A: Yes.

Q: Is that from personal observation?

A: Yes.

Q: How many times?

A: Um, I would say fifteen or twenty times that I've seen.

Q: Now is this when the person asked him or when the person with them asked?

A: When—with the person asked.

Testimony of Robert Cochran

RT1 107-09

Q [by Mr. Kennelly]: Now when did you first become involved in pro life activities?

A: I believe it was in the fall or the winter of 1988.

Q: And how did you come to be involved in such activities?

A: There was a speaker at my church speaking on pro life and at that time I was impressed by the message, by the truth of what he said and I felt a resposibility that I needed to be involved to protect pre born human beings.

Q: And where did you hear the speaker?

A: In my church.

Q: And what church is that?

A: King's Way, Four Square Church in San Mateo.

Q: If you had to describe the denominational orientation of that church, what is it?

A: It's part of the Four Square International Church of the Four Square Gospel.

Q: Now did there come a point in time where you chose to direct your pro life efforts to a particular mission, if you will or locality, if that will help you?

A: I believe it was in the spring of 1989 when I first visited outside the Planned Parenthood clinic in San Mateo and I felt I only lived a few blocks away and I felt I had a responsibility to—to do pro life work in my neighborhood.

Q: And now what form did the pro life work that you were doing take at the clinic?

A: Well, I started—I don't remember that I ever had any normal instruction but I began to practice what I call, sidewalk counseling.

Q: Now what is sidewalk counseling in your definition?

A: I would say, sidewalk counseling is trying to reach women, especially, who're headed to perhaps for an abortion at the clinic to try to give them literature and to develop a communication, an open door with the women for communication.

I understand that if a woman is going in for an abortion, she's likely to be very upset and I try to approach her in a way that she will talk to me; that she will receive the information and perhaps, she would receive some hope and alternatives to having a child aborted and that she would change her mind about an abortion that day or in the future.

RT1 111-12

Q [by Mr. Kennelly]: Has it been your usual custom and habit since the late spring or summer 1989, to appear at the San Mateo clinic?

[Record reread for court]

A: Yes, it has been my custom.

Q: Okay. And could you describe the location of what you were doing prior to February 17, 1992 for that period of time from the summer of '89 through February 17, 1992?

A: I would generally be on the Planned Parenthood side of the street on the sidewalk from north of the north driveway in my space there along to south of the south driveway (indicating).

RT1 114

Q [by Mr. Kennelly]: Okay. Now would you ever—would sidewalk counselors ever work in pairs, for example, would two of you ever approach the same prospective patients at once?

A: Well, we tried to work in pairs but what we wanted to do was, we were trying to always be in pairs for security purposes to have a witness if someone did something to us that there would be another person there.

But as far as approaching a client, one would go forward to speak with the client and the other one would remain back and pray, so it would seem less intimidating.

RT1 115-19:

Q [by Mr. Kennelly]: Now on February 17, 1992, were you present when a blockade, to use the term that's been used here, and an invasion, once again, to use the term that's been used here, of the San Mateo clinic, occurred by pro life forces?

A: I was there on a day when I observed people going inside the clinic. I don't recall independently the date but I have identified it in my own mind as the same date that's been described, February 17, 1992.

Q: Did you go inside the clinic that day?

A: No.

Q: Were you already outside when the majority of those people showed up?

A: Yes.

Q: Did you have any advance knowledge they were coming?

A: No.

Q: Now did you come to find out that in early or mid march of 1992, that a temporary restraining order had been issued by a federal judge Stand (Gilmichael) concerning picketing activities at the clinics?

A: Yes.

Q: How did you find out?

A: I don't remember the first time I was presented but I have been presented many times especially in early days with a temporary restraining order.

Actually two different copies, two different versions it seemed too—so I can only assume that I was in those early days, I was presented with it.

Q: Now at that stage, were you a named defendant in the federal lawsuit?

A: No.

Q: When did you become a named defendant in the federal lawsuit, do you recall?

A: It seems that it was about six months later, to me.

Q: Okay, what affect, if any, did you think that the injunction, the temporary restraining order that was served upon you, had on you as a unnamed defendant?

A: Well, I didn't believe it applied to me because by name was not on there and also that it says, well, first of all, the Operation Rescue verse or part of it I was not there working with Operation Rescue.

And the other part, I was not any of the named defendants nor was I working in collusion or working in cooperation with either of those parties out there.

Q: But did there come a time in March of 1992, that you became aware of the injunction's terms and decided to abide by it?

A: I believe it was in March. It was shortly, if it was not immediately, it was shortly after I was presented because I was presented in a fashion that I expected I would be arrested if I did not comply with it.

Q: Okay. And from March of '92 until the federal injunction was dissolved on August 31st 1994, did you comport your conduct with the dictates of the federal injunction?

A: I tried to always obey it. However, I did make some mistakes out there.

Q: What were the mistakes you made?

[Discussion and identification of building on diagram]

Q: Yeah. You said you made a couple of mistakes while you were out there and you were explaining what they were about?

A: The TR zone extended as I understood it and I tried to obey it fifteen feet around the property which meant it went approximately fifteen feet south of this breeze way on the sidewalk and then out into the street.

Well, on two occasions that I recall, I was speaking with a client walking in front of the plumbing supply south of the clinic and inadvertently entered the zone on one occasion. I was reminded by Planned Parenthood volunteer that I had entered and when I realized that, I turned around and walked out.

On the other occasion, I—I realized on my own and I turned around and walked back out of the zone.

RT1 125-6

Q [by Mr. Kennelly]: Okay. But between—before there was any injunction at all, that's one side of the spectrum. The other side of the spectrum is under the so called fifteen foot speech free zone, tell us what you're doing differently now than what you were doing before the injunction came into effect?

A: Well, now I stand across the street. I usually stand across the street opposite the north driveway. There are Planned Parenthood —they're basically have always been volunteers with signs directing

people into the driveways so they're not many people who park along the street.

I don't get to contact many people who're driving into the clinic, so basically I'll be on the sidewalk across the street. If I see someone coming who might be going in, I might motion to them that I have literature for them.

On occasion I'll motion for them to pull over to the curb so I could speak with them.

As I say, most people do drive into the back. When they're walking down into the driveway, it has been stated on other testimony they enter through the administration doors about in the middle of the north drive way (indicating). I, from either across the street or if there's no immediate traffic, I'll enter the street but remain outside of the fifteen foot zone.

RT1 142

Q [by Mr. Kennelly]: Did you have—did you have any advance knowledge of the July 17, 1993, as you called it, rescue?

A: No.

Q: Did you participate in it?

A: No.

RT1 151

Q [by Ms. Parker]: We'll do—Mr. Cochran, you're familiar with Operation Rescue, is that correct?

A: I've attended different activities, yes.

Q: You've been involved with that organization for many, many years?

Mr. Kennelly: Objection. Mischaracterizes his testimony.

The Court: This is cross-examination, Mr. Kennelly. Get it going.

A: For a few weeks.

Q: And you've made financial contributions to Operation Rescue?

A: Yes.

Q: You've received mailings? You're on their mailing list?

A: I've received mailings.

Q: And you attended rallies by Operation Rescue?

A: Yes.

Q: And you participate in those rallies on several occasions?

A: I've been at the rallies.

Q: And have you also participated in Operation Rescue rescues?

A: I have been at rescues, also.

RT1 155

Q [by Ms. Parker]: Mr. Cochran, you've also protested the San Mateo clinic, is that correct?

A: Well, I don't consider my activities there protest, but I have been there consistently on Saturday mornings and other special occasions.

Q: And you were present on February 15, 1992, the day of the Operation Rescue rescue at the San Mateo clinic?

A: Again, I can't independently verify but as been stated as the date of a rescue and that I believe to be the second rescue that I witnessed there, the one where the rescuers entered the clinic, would that be correct?

Q: Yes. And you were also present on with the other Operation Rescue rescuers at the San Mateo clinic, July 17, 1993.

A: Again, I can't verify the date but I would locate that as a third rescue that I witnessed. I did not go there with rescuers or in conjunction with them in any way but I was already there doing what I usually do when they begin arriving.

Q: And you were present on that day?

A: Yes.

RT1 157-58

Q [by Ms. Parker]: And when you do sidewalk counseling, you attempt to give literature to the patients?

A: Yes.

Q: And you attempt to go up in front of them and by their side and give it to them real closely, is that correct?

A: Yes. I don't attempt to walk in front to get in their way but it's just more polite to be in front of their line of view versus behind or just over where they would have to divert their attention.

Q: And you try to do that on repeated occasions?

A: Yes.

Q: And if you ever see any of the patients cry or be upset as a result of your activities?

A: I've seen a lot of anger. I have seen anger. I've seen a lot of anger and a few individuals, I can't remember I've seen anyone cry because of me talking to them.

Q: You've seen patients who're upset because of your handing this literature, is that, correct right?

A: Some patients.

Ms. Parker. No further questions, your honor.

Testimony of Anne Colby

RT2 170

Q [by Mr. Kennelly]: Okay. Now you indicated that do you know my client, Rob Cochran?

A: I've seen him. Haven't—we've seen each other.

Q: Okay. Did you ever see Mr. Cochran physically block any one's access to the San Mateo clinic?

A: No. I've seen him walk with authority right in front of patients to—talking with them and but I haven't seen him be insistent that they can't walk through.